

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6908

BILL NUMBER: SB 399

NOTE PREPARED: Dec 31, 2008

BILL AMENDED:

SUBJECT: Smoking Ban in Public Places.

FIRST AUTHOR: Sen. Dillon

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: *Prohibit Smoking in Public Places:* The bill prohibits smoking in public places and places of employment, and it provides exceptions to the smoking prohibitions. It also prohibits smoking on school buses.

Declare a Nonsmoking Place: The bill allows a person who owns or controls an establishment, facility, or outdoor area that does not qualify as a public place or place of employment to declare the area a nonsmoking place. It requires the posting of "no smoking" signs in and the removal of ashtrays from a public place or place of employment.

Fire or Refuse to Hire: The bill prohibits firing or refusing to hire a person for reporting a violation or exercising an obligation under the smoking ban law.

Indiana State Department of Health: The bill requires the Indiana State Department of Health (ISDH) or the ISDH's designee to enforce the smoking prohibitions. It requires the ISDH to establish a schedule of civil penalties. The bill provides procedures for administering civil penalties for violations, and it establishes duties for the ISDH.

Public Smoking Enforcement Fund: The bill establishes the Public Smoking Enforcement Fund.

Local Government: It allows local governments to adopt more restrictive anti-smoking ordinances.

Repeal and Conforming Changes: The bill repeals the current Clean Indoor Air Law and related definitions, and it makes conforming changes.

Effective Date: July 1, 2009.

Explanation of State Expenditures: *Summary-* Revenues for the state General Fund could decrease through elimination of a Class B infraction (which may be enhanced to a Class A infraction) and through deposit of civil penalties for violation of the smoking ban established under this bill into a dedicated, nonreverting fund.

The bill will increase costs for the Indiana State Department of Health to adopt rules and for ISDH or its designee to enforce the smoking ban and adopt rules. The increased costs will depend on how ISDH implements its enforcement responsibility.

Background and Details- Indiana State Department of Health: Under current law, the Clean Indoor Air Law is under the sections of the Indiana Code concerning the ISDH. However, enforcement responsibilities are not specifically assigned in the statute, which means that the provisions of the law may be enforced by any law enforcement officer. Under the bill, the ISDH will have enforcement responsibility including issuing a warning and assessing civil penalties. The ISDH is to adopt rules to establish civil penalties and a system to receive reports of violations. It is to inform proprietors of public places and places of employment of the requirements of the chapter and to design and implement a program of education.

The ISDH will need to increase staffing to address this new responsibility. However, there are no data available to estimate the number of public places where enforcement will occur. The ISDH could enforce the new smoking ban with its own enforcement agents or delegate enforcement to other local agencies. These management decisions will determine the additional staffing requirements.

The funds and resources required above could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; (5) new appropriations; or (6) civil penalties established by the ISDH under the bill. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

Smoking Ban Enforcement in Other States - A random sample of smoking bans in several other states indicates that generally the state department of health is responsible for enforcement of smoking bans. In most cases, the enforcement responsibility is delegated to the local health departments and/or local law enforcement. Some states provide for investigation of complaints to enforce smoking ban laws. The state policies reviewed include Arizona, Florida, Illinois, Minnesota, Nevada, New York, Ohio, Oregon, and Utah.

Explanation of State Revenues: *Repeal:* The bill repeals a Class B infraction for violation of the Clean Indoor Air Law, which may be enhanced to a Class A infraction for three prior, unrelated violations. The maximum judgment for a Class B infraction is \$1,000, and the maximum judgement for a Class A infraction is \$10,000. Judgement revenue is deposited in the state General Fund. There are no statewide data available to indicate the revenue collected or the number of violations of the Clean Indoor Air Law.

If court actions are filed and a judgment is entered, a court fee of \$70 would be assessed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), the public defense administration fee (\$3), the court administration fee

(\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund.

Civil Penalties and the Public Smoking Enforcement Fund: The bill instructs the ISDH to adopt a schedule of civil penalties that encourages compliance with the smoking prohibition and that ranges between \$100 and \$2,500. The schedule for proprietors of public places and places of employment must be progressive based on the number of prior violations, and civil penalties must be doubled for intentional violations.

The ISDH is to assess the civil penalty and place the revenue in the Public Smoking Enforcement Fund. The Fund is established under the bill to assist the ISDH with enforcing the smoking ban. It consists of grants, appropriations, and revenue from civil penalties. The ISDH administers the fund, and the money in the fund does not revert to the state General Fund.

Background: Ohio has a very similar smoking ban including that the health department develops the schedule of civil penalties. For a proprietor, the schedule provides for a warning for a first violation, a \$100 fine for a second, a \$500 fine for the third, a \$1,000 fine for the fourth, and \$2,000 for a subsequent violation. For an individual, the schedule provides for a warning for a first offense and a \$100 fine for each subsequent violation. Between July 1, 2007, and January 9, 2008, the Ohio department of health received \$7,600 in fine revenue.

Explanation of Local Expenditures: *Enforcement:* The bill requires the ISDH and the ISDH's designees to enforce the smoking ban. Potential designees of the ISDH include local health departments or local law enforcement (see discussion in *Explanation of State Expenditures*), which may increase costs for these agencies. However, to the extent that local law enforcement is already responsible for enforcement of violations of the indoor air quality law, costs may not increase as much for a law enforcement agency.

The funds and resources required above could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; (5) new appropriations from a local unit of government; or (6) state funding from civil penalty revenue through the Public Smoking Enforcement Fund. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

Explanation of Local Revenues: *Repeal:* Repeal of the infractions for violation of the Clean Indoor Air Law will reduce revenue to local government that would have occurred if court actions are filed and a judgment is entered. The county general fund would have received 27% of the \$70 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected: ISDH.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources:

Fiscal Analyst: Karen Firestone, 317-234-2106.